

CONVERGYS INFORMATION MGMT. GROUP, INC., et al. vs. IGATE CORP., et al.
DARIN BROWN
2/13/04

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CONVERGYS INFORMATION :
MANAGEMENT GROUP, INC. and :
CHUBB CUSTOM INSURANCE :
COMPANY, :
Plaintiffs :
-v- : Case No. CV-01-618
:(Judge Beckwith/Magistrate
: Judge Sherman)
IGATE CORPORATION, et al., :
Defendants :
- 0 -

The deposition of DARIN BROWN, taken before
Susan K. Lee, CVR-CM, Court Reporter and Notary Public
in and for the State of Ohio, at the law offices of
Ulmer & Berne LLP, 600 Vine Street, Suite 2800,
Cincinnati, Ohio, on the 13th day of February, 2004,
beginning at the hour of 9:15 a.m. and ending at 5:12
p.m. of the same date.

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1 A When you say from what was it
2 generated, I mean, the shell history is generated by
3 Unix as you execute commands.
4 Q This particular document in the form
5 that it is in was produced in discovery for the first
6 time by Convergys within the past several days. Where
7 was this document in Convergys' records?
8 A This particular file still resides on
9 magnetic disk on the database server.
10 Q So it has been there since 1999 up to
11 the present?
12 A It exists today. My presumption is
13 it's been there since 1999.
14 Q Do you know why this document was not
15 produced in the form it's in until this week?
16 MR. SHANK: Objection.
17 THE WITNESS: No, I don't.
18 BY MR. LUCAS:
19 Q Did you locate it or gather it to
20 provide it to counsel within the past month or so for
21 purposes of it being used in the litigation?
22 MR. SHANK: I'll take that one, Darin.
23 This one -- this document was provided to
24 counsel as part of the process of responding to
25 defendants' requests for admissions sometime,

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1 Unix system.
2 Q What is the time period that is covered
3 by the entries on Exhibit Number 7?
4 A It's not possible to determine that.
5 Q So in the normal course when you have a
6 shell history, there's not a time stamp that becomes
7 part of it; is that correct?
8 A That is correct.
9 Q And just to clarify, when we were
10 looking in the last group of exhibits on an alert log,
11 in comparison the time stamps appear as part of the
12 document itself; is that correct?
13 A Yes, that is correct.
14 Q Exhibit Number 7, what time frame do
15 these entries, in fact, relate to?
16 A September 20th or earlier of 1999.
17 Q Can you be any more specific than that?
18 A I cannot.
19 Q What is the basis for your conclusion
20 that it relates to the September 20th or earlier time
21 frame?
22 A The time stamp on the file on magnetic
23 disk is September 20th of 1999.
24 Q Let me just ask you: If you look at
25 the center, top center, of the first page of Exhibit

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1 again, in the September to October 2003 time
2 period.
3 BY MR. LUCAS:
4 Q Let me ask you: Why was the document
5 then not produced until this week?
6 MR. SHANK: He doesn't -- he doesn't
7 know the answer to that question.
8 MR. LUCAS: Well, I mean, you're
9 answering the questions for him, so I'll direct
10 it to you. Why was this document not produced
11 until this week?
12 MR. SHANK: This -- this document was
13 not produced until this week because counsel
14 did not believe and still doesn't believe that
15 it really has anything to do with the case, but
16 in the course of preparing witnesses for
17 depositions, counsel erred on the side of
18 deciding to produce this document within the
19 last week.
20 BY MR. LUCAS:
21 Q What does this document reflect, Mr.
22 Brown? Start, if you will, with a general description.
23 What does this reflect?
24 A Generally a shell history reflects the
25 commands that are executed by someone logged into a

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1 Number 7 --
2 A Mm-hmm.
3 Q -- it says rrao_hist_0920.txt. What
4 does that 0920 refer to?
5 A September 20th of 1999.
6 Q Is there -- how frequently are these
7 preserved on magnetic disk?
8 MR. SHANK: Objection to form. What's
9 the reference to these, Kevin?
10 MR. LUCAS: A document of this sort, a
11 shell history. Let me rephrase the question.
12 THE WITNESS: Sure.
13 BY MR. LUCAS:
14 Q You indicated that, to the best of your
15 knowledge, this particular document relates to some
16 time period on or before September 20th of 1999,
17 correct?
18 A That is correct.
19 Q And the reason for that is, you said,
20 because that's what is indicated on the magnetic disk;
21 is that correct?
22 A More specifically, it's what is
23 indicated by the time stamp of the file on magnetic
24 disk, yes.
25 Q Okay. What other time stamps on files

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1 Hulin?

2 A I -- I don't recall a specific date.

3 Q Do you recall how often or how many
4 times you met with him during this time frame to
5 discuss the cause or possible causes of the September
6 17th database corruption?

7 A No, I don't recall.

8 Q Do you have any notes of any meetings
9 during this time frame that you had with Mr. Hulin or
10 Mr. Koopmans or Mr. Kura or anyone else at Convergys
11 concerning discussions of the cause or possible cause
12 of the database corruption?13 MR. SHANK: I assume you're not
14 including e-mail in that question.

15 MR. LUCAS: Yes.

16 THE WITNESS: No. I -- there were no
17 notes taken of --

18 BY MR. LUCAS:

19 Q Mr. George -- is it Robson? If that's
20 how you pronounce it, R-O-B-S-O-N, his name has been
21 indicated in the files. Did you have discussions with
22 Mr. Robson during the September 17 to September 21 time
23 frame concerning the cause or possible causes of the
24 database corruption?

25 A I don't believe so, no.

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1 Q Mr. Mike DeCarlo, during this same time
2 frame, did you have any discussions with him concerning
3 the cause or possible causes of the database
4 corruption?5 A It's -- it's likely that I would have,
6 but I don't have a specific recollection.7 Q And did you have any discussion during
8 this time frame with either Rick Litton or with Ravi
9 Kura concerning any activities they were involved in
10 with Mr. Rao on September 16th or September 17th as
11 part of the usage split project?

12 A Not to my recollection, no.

13 Q Now, you indicated what you were told
14 concerning Mr. Hulin's conclusions or view after
15 reviewing Exhibit Number 7. When you first looked at
16 Exhibit Number 7, whatever time that was, was there any
17 significance in Exhibit 7 in terms of what you saw in
18 Exhibit 7, significance for you in reaching a
19 conclusion as to the cause of the database corruption?20 MR. SHANK: Object to form. I'm not
21 sure this witness has testified that he ever
22 looked at this particular exhibit in trying to
23 determine the cause of the database corruption.
24 And if he said that, I missed it.

25 THE WITNESS: Yeah. So, I guess, can

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1 you rephrase.

2 MR. LUCAS: I'm trying to think of a
3 way of rephrasing without trying to
4 characterize Mr. Koopmans' testimony yesterday
5 since we don't have a transcript yet. Let me
6 see if I can do it in a series of questions.

7 THE WITNESS: Okay.

8 BY MR. LUCAS:

9 Q This particular document, Exhibit
10 Number 7, is a shell history with a file date of
11 September the 20th of 1999, correct?

12 A That is correct.

13 Q You said there is another document that
14 exists that is a shell history of Mr. Rao dated
15 September 17th, 1999; that's correct?

16 A Yes, that is correct.

17 Q Okay. You looked at the shell history
18 dated September 17th, 1999 prior to the time that Mr.
19 Rao was terminated on September 21; is that correct?

20 A Yes, that is correct.

21 Q And I thought your testimony was you
22 couldn't recall when you first reviewed Exhibit Number
23 7, which is the shell history of September the 20th of
24 1999.

25 A Right. That is correct.

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1 Q But you have read it prior to today?
2 Or not?3 A I have not read the contents of this
4 file, no.5 Q Then let me ask you a broad question.
6 Maybe I misunderstood part of Mr. Koopmans' testimony,
7 and I can follow up with specifics.8 Is it your understanding that there's
9 anything in Exhibit Number 7, which is the shell
10 history dated September 20th, that is not in the shell
11 history dated September 17th that is significant for
12 any conclusion or contention of Convergys as to the
13 cause of the database destruction or concerning Mr.
14 Rao's activities during this September 16th to
15 September 21st time frame?

16 MR. SHANK: Object to form.

17 THE WITNESS: There is nothing in this
18 September 20th file that was used to draw
19 conclusions in this case.

20 BY MR. LUCAS:

21 Q Now, let me phrase it another way
22 because I want to make sure that I'm understanding, I
23 mean, that we're not missing each other with the
24 question and the answer.

25 As a general matter, you understand

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1 second set that I told you about.

2 Q Okay. Keep that in mind because I'm
3 going to come back and have you explain the
4 significance of those two sets, but let me at least
5 have you complete your review of the document.

6 Is there any other set of commands or
7 any other commands that are significant to you for the
8 purposes that I asked you about?

9 A I would say potentially significant are
10 the -- the next command is the cd, space, bdump. Then
11 four lines below that you see vi, space, alert_ssp.log;
12 Then the ls command following; then potentially three
13 lines down from that another vi alert_ssp.log.

14 Q Is that part of the third set of
15 commands or is this now a fourth set of commands as
16 you're looking at them?

17 A I guess given the number of commands
18 I'm indicating here, I'd prefer that we go through them
19 one by one while we're talking about them.

20 Q That's fine.

21 A I don't to get confused on the
22 groupings. At this point -- well, I'll continue to
23 give commands that I find significant. So the cd and
24 to the /RDBMS, that next line after vi alert_ssp.log;
25 ls-l following that; another cd into the

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1 MR. SHANK: Kevin, while the witness is
2 doing that, I might as well -- there's a
3 statement that I made that I want to clarify
4 and/or correct before. And the question that
5 was posed to the witness that I answered on
6 behalf of the witness concerned the 9/20
7 command history of Ragesh Rao and specifically
8 the question was why it was not produced
9 earlier in discovery.

10 The reason why it was not produced
11 earlier in discovery is that counsel did not
12 realize that it was different than the one that
13 had already been produced in discovery and it
14 was not utilized as a document that was
15 consulted in responding to the defendants'
16 requests for admissions.

17 Previously I made some
18 characterizations as to whether or not
19 Convergys believes that it was an important
20 document or not an important document and it's
21 those characterizations that I want to clarify,
22 that I'm withdrawing on the record.

23 So the simple answer to your question
24 on the record is: It was not produced earlier
25 in discovery because, one, counsel didn't

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1 /RDBMS/oracle/data/sSUP; followed by an ls command;
2 followed by an exclamation point, pwd.

3 And then on the next page which is 282,
4 cd, space, bdump; two ls commands following that; and a
5 cd, dot, dot; an ls command. And I think that's the --
6 the -- primarily the significant -- in the recent shell
7 history anyway.

8 Q Let me ask you to take a moment to
9 yourself here and I'm going to ask you to take a pencil
10 or a pen and in the left-hand margin compared to those
11 if you could just bracket off any of them that you
12 think you would prefer to explain as a group, because
13 otherwise we'll go through one line at a time.

14 A Okay.

15 Q But if there are any that you think
16 that it would make more sense in explaining your
17 understanding or reasoning to treat as a group -- and
18 let me ask you to do this: Start at the top and mark
19 number one. If it's a single line you want to talk
20 about as a single line, make that number one. Then go
21 down to number two, number three. And if there's any
22 ones you're going to group, then group them and number
23 them as that number, just so we'll walk through that
24 way.

25 A Okay.

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1 realize it was different than the previous
2 document already produced and, second, to the
3 extent it was responsive to defendants'
4 discovery requests, which is something that is
5 questionable, but to the extent it was
6 responsive, it was inadvertently not produced.

7 MR. LUCAS: The document that we're
8 talking about the shell history with a file
9 date of September 20th, 1999, is that going to
10 be a document, either as a document or its
11 content, that's the subject of questioning of
12 Mr. Rao at his upcoming deposition?

13 MR. SHANK: I am not participating in
14 that deposition, but --

15 MR. HART: Yes.

16 MR. SHANK: -- yes.

17 MR. LUCAS: Then I think we have a
18 separate issue to address and that is whether
19 or not that document should be made available
20 to Mr. Rao or permitted to be made available to
21 him prior to his deposition. I mean, if it's
22 going to be the subject of questioning, I think
23 it has to be. And I'll go off the record and
24 talk to you about this and then if you want to
25 come back on the record, we can. So maybe we

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1 BY MR. LUCAS:
 2 Q Is there any other document, other than
 3 Exhibit 19, that even purports to reflect even any
 4 discussion that you had with Mr. Koopmans in September
 5 of 1999 concerning any allegation or contention that
 6 Mr. Rao's keystroke log or shell history may have been
 7 edited or modified?
 8 MR. SHANK: Objection to form.
 9 THE WITNESS: Well, I think there are
 10 other documents that would support that.
 11 MR. LUCAS: Now, that's a different
 12 question. Come on, let's --
 13 THE WITNESS: Well, I --
 14 MR. SHANK: He's trying to answer your
 15 question, Kevin, so --
 16 MR. LUCAS: Well, I'll ask it again
 17 because, I mean --
 18 MR. SHANK: Well, it's not the clearest
 19 of questions.
 20 MR. LUCAS: Well, whatever. That's
 21 fine.
 22 BY MR. LUCAS:
 23 Q Is there any other document anywhere,
 24 other than Exhibit 19, that purports to summarize or
 25 constitute an opinion you expressed to Mr. Koopmans

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1 logs for the databases.
 2 Q Well, let me ask you: Which alert logs
 3 for which databases?
 4 A Presumably it would be the alert logs
 5 for the same time period contained in this file, this
 6 history file, which we've already established we don't
 7 know exactly the time frame contained in this history
 8 file.
 9 Q Are you talking about the alert log for
 10 the SSUP instance?
 11 A For the SSP or SSUP instances.
 12 Q Didn't you testify earlier that you're
 13 not contending and Convergys is not contending that the
 14 alert file for the SSP instance has been edited or
 15 modified?
 16 MR. SHANK: Objection to the extent
 17 that it's already been asked and answered and I
 18 think that mischaracterizes to some extent his
 19 previous answer.
 20 THE WITNESS: I -- I did not -- I did
 21 not testify to that.
 22 BY MR. LUCAS:
 23 Q Do you contend that the alert log for
 24 the SSP instance was edited or modified by Mr. Rao?
 25 A I don't specifically contend that it

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1 back in September of 1999 that Mr. Rao's keystroke log
 2 or shell history may have been edited or modified?
 3 MR. SHANK: Objection to form and to
 4 the extent he's already answered this question
 5 in part.
 6 THE WITNESS: This is the only one I
 7 know of.
 8 BY MR. LUCAS:
 9 Q Now, the other question that you were
 10 answering, you were saying there are other documents
 11 that may reflect or evidence the possibility of an
 12 editing or amendment to Mr. Rao's keystroke log or
 13 shell history, correct?
 14 A Correct.
 15 Q Okay. What other documents in your
 16 mind or in your view provide such additional evidence
 17 or support?
 18 A Well, in corroborating or discrediting
 19 what's in this file, there are a number of database
 20 files that could be -- database log files that could be
 21 referenced to determine the commands in this file
 22 versus what was done in the database.
 23 Q Well, why don't you tell me what those
 24 various files are?
 25 A The things I'm thinking of is the alert

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1 was modified by Mr. Rao.
 2 Q Do you know whether Mr. Koopmans in
 3 your discussions with him asserts that Mr. Rao edited
 4 or modified the alert log for the SSP instance?
 5 A I don't -- I don't know that -- I don't
 6 know of anybody at Convergys that is contending
 7 specifically that Mr. Rao edited the alert log for the
 8 customer database.
 9 Q Well, what I feel uncomfortable with is
 10 that I don't know your answer when you keep saying
 11 specifically.
 12 A The alert log for the customer database
 13 appears to have been edited, but I don't think anybody
 14 has contended that Mr. Rao necessarily did that
 15 editing.
 16 Q And what was the edit that took place
 17 in the SSP alert log?
 18 A The alert log that exists on magnetic
 19 disk today, which I believe has been produced, is
 20 missing all of the entries for September 17th of 1999.
 21 Q And how did that come about? You don't
 22 know?
 23 A I don't know.
 24 Q And as far as you know, Convergys
 25 doesn't know, correct?

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1 communication with Mr. Rao as to what Mr. Koopmans
2 asked for or how Mr. Rao characterized what he
3 provided; is that correct?
4 A That is correct.
5 Q This is what Mr. Koopmans gave you with
6 his Exhibit 18, correct?
7 A That is correct.
8 Q Okay. And did you read these
9 documents?
10 A I reviewed -- I -- I presume I did read
11 them. I mean, I reviewed them. I don't know what you
12 mean by read.
13 Q Well, let me ask you with respect to
14 the first two pages of Exhibit 14. It's a document
15 that has 26 numbered paragraphs and then an unnumbered
16 paragraph at the end. Did you read each of these
17 paragraphs?
18 A I -- I did.
19 Q Did you do anything to compare what was
20 stated in these paragraphs with other documents that
21 were then available to you?
22 A Are you talking about on receipt of the
23 e-mail at the time -- I mean, in September of 1999?
24 Q Yes.
25 A No, I did not.

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1 the third paragraph?
2 A Yes, I see that.
3 Q Did you understand that those were the
4 shell histories or keystroke logs for Ravi and Rick
5 Litton?
6 MR. SHANK: Objection to foundation.
7 BY MR. LUCAS:
8 Q Is that your understanding?
9 A That's what I would believe to be the
10 case, yes.
11 Q Have they been preserved by Convergys?
12 MR. SHANK: Objection. I think he's
13 already talked about this topic.
14 THE WITNESS: No.
15 BY MR. LUCAS:
16 Q Did you have any discussion after your
17 receipt of Exhibit Number 18 with Ravi or Neil
18 concerning the statements that are set forth in Exhibit
19 18?
20 MR. SHANK: Object to form.
21 THE WITNESS: Again, at the time prior
22 to preparing my e-mail?
23 MR. LUCAS: Your e-mail response of
24 6:12 a.m. on the 21st that's been marked as
25 Exhibit 19.

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1 Q Did you -- so you didn't make any kind
2 of comparison of what's stated in the first two pages
3 of Exhibit 14 with other documents before you sent Mr.
4 Koopmans your reply e-mail that's been marked as
5 Exhibit 19, correct?
6 A That's correct.
7 Q And if you'll look at Exhibit 18, Mr.
8 Koopmans says that he had met -- that he first had
9 grilled Mr. Rao with a purpose to trap him and then he
10 had gotten together with Neil Hulin and Ravi Kura and
11 discussed matters with them and then all three of them
12 met with Mr. Rao and went over all these matters. Did
13 you see that?
14 A Yes.
15 MR. SHANK: Object to form.
16 BY MR. LUCAS:
17 Q And you see, for example, that there
18 are statements in there about Ravi verifying certain
19 approaches, doing certain work?
20 MR. SHANK: Object to form.
21 BY MR. LUCAS:
22 Q Do you see that?
23 A Yes, I see that.
24 Q Do you see the reference to the
25 histories of Ravi and Rick Litton that's referred to in

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1 THE WITNESS: No, I didn't.
2 BY MR. LUCAS:
3 Q Mr. Rao's services were terminated in
4 the morning of Tuesday, September 21, 1999. Did you
5 have any discussion with Neil or Ravi concerning any of
6 these matters prior to the termination of Mr. Rao's
7 services?
8 A I don't believe so.
9 Q Do you see the reference in the second
10 paragraph where Mr. Koopmans says "We went to your home
11 directory and deduced you had locked it away in the
12 history directory"? You see that reference?
13 A Yes.
14 Q What did you understand he was
15 referring to?
16 MR. SHANK: Objection to foundation.
17 Calls for speculation.
18 THE WITNESS: He was referring to the
19 preservation of the history file from September
20 17th at 1:02 p.m.
21 BY MR. LUCAS:
22 Q That's what you've identified earlier
23 as being the shell history or the keystroke log with a
24 file date of September 17th, correct?
25 A That's correct.

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1 BY MR. LUCAS:
 2 Q Did he tell you who instructed him to
 3 do it?
 4 MR. SHANK: Hang on. Hang on, Mr.
 5 Lucas. For this entire topic, if you feel like
 6 you need to disclose communications between Mr.
 7 Koopmans and counsel or between you and
 8 counsel, do not disclose those communications.
 9 If you feel like you do not need to disclose
 10 those to properly answer Mr. Lucas' question,
 11 then you may answer it, if you feel like that.
 12 Do you understand?
 13 THE WITNESS: No. Can you repeat what
 14 you just said?
 15 MR. SHANK: Let's go question by
 16 question. What's the question, Mr. Lucas?
 17 BY MR. LUCAS:
 18 Q Did Mr. Koopmans tell you who the
 19 person was that instructed him to make these notes?
 20 A Yes.
 21 Q Okay. Who did he say it was?
 22 A I mean, this is where I don't know.
 23 MR. SHANK: You can answer who.
 24 THE WITNESS: Okay. It was -- I
 25 believe it was Jill Fuchs.

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1 time you're talking about, I think that's
 2 certainly the case.
 3 MR. LUCAS: As of the time Mr. Koopmans
 4 prepared the notes, which he testified to was
 5 no later than September the 23rd.
 6 MR. SHANK: Convergys is maintaining
 7 that communications between their attorneys
 8 that were investigating the case and Convergys'
 9 business people fall within the attorney/client
 10 privilege and attorney work product.
 11 MR. LUCAS: Well, that's not the
 12 question that's on the table. The question
 13 that's on the table: Are you arguing that as
 14 of September 23rd, 1999 that Convergys was
 15 contemplating litigation as a result of the
 16 alleged events of September 17th, 1999?
 17 MR. SHANK: I think I stated my
 18 position, Mr. Lucas. I've stated that they're
 19 both attorney/client privilege and possibly
 20 attorney work product.
 21 MR. LUCAS: You don't see a distinction
 22 between my question and what you answered?
 23 MR. SHANK: I think I've stated my
 24 position.
 25 BY MR. LUCAS:

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1 BY MR. LUCAS:
 2 Q Did he tell you what the notes were to
 3 be used for, in his understanding?
 4 MR. SHANK: Objection. I'm going to
 5 instruct the witness not to answer that
 6 question.
 7 BY MR. LUCAS:
 8 Q Would you take a look at Exhibit Number
 9 17, please?
 10 MR. LUCAS: Let me ask -- before we do
 11 this, let me ask on the record: Rob, what is
 12 the basis of the objection?
 13 MR. SHANK: I think I've clearly said
 14 it a number of times.
 15 MR. LUCAS: I'd like to hear it again.
 16 MR. SHANK: Attorney/client privilege.
 17 MR. LUCAS: Is that the sole privilege?
 18 MR. SHANK: Well, yeah, I guess I
 19 should add -- I think I said this before, but I
 20 guess I should add attorney work product as
 21 well.
 22 MR. LUCAS: Is Convergys maintaining
 23 that in September of 1999 it was contemplating
 24 litigation as a result of these events?
 25 MR. SHANK: Depending on what point in

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1 Q Take a look at Exhibit 17, please. Do
 2 you recognize this as being -- this is a document you
 3 looked at earlier today -- as being the final
 4 postmortem or part of the final postmortem done by
 5 Convergys concerning the root cause and the irrevocable
 6 corrective actions relating to the events on or about
 7 September 17th of 1999?
 8 A Yes.
 9 Q Will you turn your attention to the
 10 root cause portion? It states "The technical root
 11 cause of the problem was that the script created to add
 12 the six tablespaces (17 datafiles) to the database
 13 contained..." -- and it describes some words that are
 14 in the file. Then it says it "...contained an error in
 15 that they pointed to identically named datafiles
 16 associated with the customer database." Do you see
 17 that?
 18 A Yes.
 19 Q And was that your understanding at the
 20 time?
 21 A Yes.
 22 Q See the next sentence when it says
 23 "When the script was run to create the
 24 tablespaces/datafiles in the usage database..." -- do
 25 you see that?

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1 Q Is it your understanding that Convergys
2 is not contending that Mr. Rao revised his shell
3 histories or keystroke logs to remove entries or
4 commands that would have been made for the purpose of
5 creating or running the tablespaces/data files in the
6 usage database which are believed to have caused the
7 corruption of data in the customer or SSP instance?
8 MR. SHANK: Object to form.
9 THE WITNESS: Can you -- can you ask
10 the question again? I didn't understand the
11 question.
12 MR. LUCAS: Let me rephrase it.
13 BY MR. LUCAS:
14 Q Is Convergys contending in this lawsuit
15 that Mr. Rao edited or amended his shell histories or
16 keystroke logs so as to remove or alter evidence in
17 those shell histories or keystroke logs that would
18 reflect that he had run and/or created scripts for
19 purposes of creating tablespaces/table files in the
20 usage database that resulted in the corruption in the
21 customer instance?
22 MR. SHANK: Objection to form and I
23 think the witness has already answered a
24 question similar to this.
25 THE WITNESS: So is Convergys

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1 MR. SHANK: Objection. Don't answer
2 that question.
3 BY MR. LUCAS:
4 Q You had never even read the shell
5 history or the keystroke log as of 9/20 before Mr.
6 Rao's services were terminated, correct?
7 MR. SHANK: Objection. Asked and
8 answered.
9 THE WITNESS: That is correct.
10 BY MR. LUCAS:
11 Q So you never made any comparison at the
12 time between keystroke logs as they existed as of 9/20
13 versus keystroke logs as they existed on 9/17, correct?
14 MR. SHANK: Objection. Asked and
15 answered.
16 THE WITNESS: Prior to Mr. Rao's
17 discharge, that's true.
18 MR. LUCAS: Okay.
19 BY MR. LUCAS:
20 Q And, in fact, prior to Mr. Rao's
21 discharge Mr. Hulin had told you that he had reviewed a
22 keystroke log of Mr. Rao either from September the 20th
23 or at least after September the 17th and he didn't find
24 anything that was suspicious or a problem, correct?
25 MR. SHANK: Objection. Asked and

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1 contending that -- I want to make sure I
2 understand. Is Convergys contending that Mr.
3 Rao edited his keystroke history file to remove
4 the commands that would have been executed to
5 create these data files?
6 MR. LUCAS: That's correct.
7 THE WITNESS: Because the commands that
8 get executed aren't even in that file, I don't
9 believe Convergys is contending that.
10 BY MR. LUCAS:
11 Q Is Convergys contending in this lawsuit
12 that Mr. Rao edited his shell histories or keystroke
13 logs for any purposes related to the September 17th
14 database corruption or any alleged cover-up relating to
15 those events?
16 A I believe, yes, Convergys is contending
17 that.
18 Q What is the contention?
19 A At a minimum, the contention is that
20 the keystroke history of Mr. Rao on September 20th of
21 1999 was apparently different from the keystroke
22 history of Mr. Rao on September 17th at 1:02 p.m.
23 Q And, now, is this something you
24 discussed between your testimony right now and your
25 testimony this morning concerning these matters?

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1 answered.
2 THE WITNESS: That's correct.
3 BY MR. LUCAS:
4 Q When is the first time you ever heard
5 from anyone that Convergys was contending or believed
6 that Mr. Rao's keystroke log as it related to the
7 events or his actions of 9/16 or 9/17 of 1999 had been
8 or may have been edited or amended?
9 MR. SHANK: Objection to form.
10 THE WITNESS: When was the first time I
11 heard about that?
12 MR. LUCAS: Yes.
13 THE WITNESS: I don't recall.
14 BY MR. LUCAS:
15 Q Well, was it in September of 1999?
16 Because you've already testified it wasn't before
17 September 21 of 1999.
18 A I don't believe that was my testimony.
19 Q You never heard that allegation by
20 Convergys prior to September 21, 1999, did you?
21 MR. SHANK: I think he's trying to
22 clarify that point.
23 THE WITNESS: I have never heard an
24 allegation that Convergys has proof that Mr.
25 Rao modified his shell history. But --

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CONVERGYS INFORMATION MGMT. GROUP, INC., et al. vs. IGATE CORP., et al.
DARIN BROWN
2/13/04

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1 BY MR. LUCAS:
2 Q As of when is that answer?
3 A That's -- I've never -- that's --
4 Q Even as of today?
5 A Even as of today, I have not heard any
6 evidence that we have proof that he modified his shell
7 history.
8 Q Okay. Now, separate from proof, when
9 was the first time you heard Convergys contend that
10 they believe Mr. Rao modified his shell history or
11 keystroke log?
12 A I don't know when I first heard that.
13 Q Well, was it -- I'm sorry. I didn't
14 mean to interrupt your answer. Go on.
15 A Is the question when did I formulate
16 that opinion?
17 Q Well, let me ask you first whether you
18 heard it from anybody.
19 A Not -- not that I recall. I mean --
20 Q I take it you've heard it from someone
21 at some point in time or not?
22 A I'm sure it was discussed over the
23 course of -- you know, it probably was discussed in
24 September of 1999.
25 Q Okay. But you don't recall that; is

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1 looking for a specific statement in here. So in
2 paragraph three on Exhibit 18 Mr. Koopmans states that
3 "So I asked Neil to take a look at the original history
4 file. We scoured every line of the file and found
5 nothing that disproved Ragesh's assertions." I read
6 that to mean that they did not find the lines that I
7 outlined to you earlier where it appears that Mr. Rao
8 removed the alert log, the lines we were discussing in
9 the shell history, because that would clearly be
10 suspicious behavior associated with this particular
11 incident.
12 Q That's the entirety of your answer?
13 A Yes.
14 Q After -- you've now told me the
15 entirety of any statement, contention, inference that
16 any Convergys representative made prior to September
17 21, 1999 that Mr. Rao may have edited his shell
18 histories or keystroke logs, correct?
19 A Prior to September 21st you said. Yes.
20 Q When is the next time when anyone on
21 behalf of Convergys indicated to you that Mr. Rao may
22 have edited his keystroke logs or shell histories?
23 A I don't know.
24 Q Well, do you recall anybody even saying
25 it at any time in 1999?

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1 that a correct statement?
2 A I don't recall that.
3 Q As of September 21, 1999 did you
4 contend or tell anyone that you believed Mr. Rao had
5 edited his shell history or keystroke log?
6 A I don't recall specifically telling
7 people that.
8 Q And it's not mentioned in your Exhibit
9 19, correct, that we just went through?
10 A Well, I believe it's pretty
11 specifically inferred, but I don't -- I did not state
12 it explicitly.
13 Q And then did anyone else within
14 Convergys ever state to you prior to September 21, 1999
15 of their belief that Mr. Rao had edited somehow his
16 shell history or keystroke log?
17 A No, I don't believe so.
18 Q Can you show me on Exhibit 19 where it
19 is strongly inferred, in your mind, that Mr. Rao had or
20 may have edited his shell history or keystroke log?
21 A Well, I can't tell you with only
22 Exhibit 19, but if we get I think it's Exhibit 18 which
23 is Mr. Koopmans' e-mail, between the two of them I can
24 show that.
25 So on Exhibit 18 -- I'm sorry. I'm

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1 A I feel confident that that was stated.
2 I mean, that was a -- that was a presumption, a basis
3 for the -- part of the -- part of the basis for the
4 discharge of Mr. Rao.
5 Q So that presumption was important, as
6 you understood it, in Convergys' determination that Mr.
7 Rao had done something inappropriate in the nature of a
8 cover-up activity?
9 MR. SHANK: Objection. Lack of
10 foundation. Calls for speculation.
11 BY MR. LUCAS:
12 Q Isn't that correct?
13 A I can't state how significant it was,
14 for example, in the discharge decision which --
15 Q No. I didn't ask you that. I asked
16 you with respect to significant in concluding that
17 there was a cover-up activity.
18 MR. SHANK: Same objection.
19 THE WITNESS: I think it was one of
20 many factors.
21 BY MR. LUCAS:
22 Q And you've described those factors; is
23 that correct?
24 A Yes.
25 Q So you don't recall any specific

DARIN BROWN

VOLUME II
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CONVERGYS INFORMATION :
MANAGEMENT GROUP, INC.,
and CHUBB CUSTOM INSURANCE :
COMPANY, :

Plaintiffs, :

-v- :

CASE NO.: CV-01-618

:(Judge Beckwith)

IGATE CORPORATION, et al., :

Defendants.

* * * * *

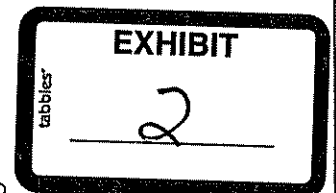
The continuation of the deposition of DARIN BROWN, taken before Debra A. Sprague, Certified Court Reporter and Notary Public in and for the State of Ohio, at the offices of Ulmer and Berne, LLP, 600 Vine Street, Suite 2800, Cincinnati, Ohio, on the 19th day of February, 2004, beginning at the hour of 1:37 p.m., and ending at the hour of 3:03 p.m.

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Page 22

1 of weeks prior to me joining.
 2 Q And Mr. Ravi Kura, was he already there as
 3 an employee or a contractor when you first came to
 4 Convergys as a contractor in August of 1999?
 5 A Yes, he was.
 6 Q Okay. Do you know how long he had been
 7 there prior to your joining?
 8 A If I recall correctly, he may have been
 9 hired in June of 1999, but I don't know.
 10 Q You spoke in your -- in the earlier
 11 session of your deposition about shell histories. And I
 12 think at various times I referred to them in asking you
 13 questions as keystroke logs and/or as shell histories.
 14 And I take it from your prior testimony that in September
 15 of 1999, you accessed, at some point in time, Mr. Rao's
 16 shell history as it then existed.
 17 A Yes, I did.
 18 Q Can you recall the first occasion on which
 19 you accessed Mr. Rao's shell history?
 20 A No, I can't.
 21 Q Can you describe for me the process or
 22 procedure by which or the manner in which you accessed Mr.
 23 Rao's shell history? What did you have to do to actually
 24 access it?
 25 A I can testify to what I likely did. I

Page 23

1 don't --
 2 Q Let's start -- That's fine. You don't
 3 recall exactly what you did, okay.
 4 A No, I don't recall exactly what I did.
 5 Q So what would have been the most likely
 6 means, in your mind, that you would have followed to
 7 access Mr. Rao's shell history back in September of 1999?
 8 A I likely would have run the strings
 9 command on the history file and viewed the results on my
 10 screen.
 11 Q Would you have had to call over to -- at
 12 the operating system group within Convergys to get access
 13 to Mr. Rao's shell history?
 14 A The shell history file that I'm referring
 15 to, no.
 16 Q Let me ask you, is there a certain way you
 17 could describe the shell history file that you're
 18 referring to, so I understand what you mean?
 19 A I can't recall if I described this before
 20 or not. But when you log into Unix, you log in as your
 21 individual user ID. Presumably nobody knows your password
 22 except you. Then you do what's called an op, O-P command,
 23 to become the Oracle user, to be able to administer the
 24 database.
 25 Q And then what do you do?

Page 24

1 A The -- After you've done the op Oracle
 2 command to be able to administer the database, that shell
 3 history file, I can access without having to request
 4 permission to access it.
 5 Q And when you access, at that time, when
 6 you are able to access, in this case Mr. Rao's shell
 7 history file, are you able to read it?
 8 A Yes.
 9 Q Are you able to write to it or edit it?
 10 A There's nothing technically that would
 11 prevent that.
 12 Q Now, I'm taking from your answer that
 13 there perhaps is another shell history. Maybe I'm wrong.
 14 But you had said the shell history as you're referring to
 15 it. Is there some other shell history or keystroke log of
 16 a -- that would have related to production DBAs like Mr.
 17 Rao back in September of 1999, that's different than what
 18 you just described?
 19 A There is.
 20 Q Okay. Can you tell me --
 21 A It's not really -- It's not different in
 22 content. But when you log in to the Unix server as your
 23 individual ID, you have a shell history that only that
 24 particular user can access.
 25 Q And you're saying the content is the same

Page 25

1 as the type of shell history that you were just talking
 2 about?
 3 A It would still track the commands. It
 4 would just be the commands run under that individual user
 5 account instead of under the Oracle user account.
 6 Q If you were to print it up, if you were to
 7 make a hard copy of it, would it look different, these two
 8 different types of shell histories?
 9 A Other than the content, no.
 10 Q I'm sorry, what do you mean other than the
 11 content? Now, I thought the content was the same.
 12 A Well, the content is the command history
 13 that that individual user ran, which is likely not the
 14 same as the command history that the Oracle user would
 15 have run.
 16 Q Okay. Cause there could -- there would --
 17 Why would that be?
 18 A Actually, most of the DBA team logs into
 19 the server and immediately does an op Oracle. So very few
 20 of the database administrators do things under their
 21 individual accounts.
 22 Q So the shell history, as a general matter,
 23 is something that with the way the production DBAs work,
 24 they would all, as a general matter, have access to it
 25 because they all generally logged in under the op command?

7 (Pages 22 to 25)

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1 recall, you hadn't even looked or reviewed this document
2 in September of 1999, correct?
3 A Right, as far as I can recall, that's
4 true.
5 Q So now I'm asking you in the capacity --
6 And I'm not asking you to disclose communications with
7 Convergys counsel. But as a Convergys designee in this
8 case or one of two designees on various subject matters,
9 are there entries on Exhibit 7 which Convergys believes
10 are significant for purposes of the determination of the
11 cause or likely cause of the September 17 production data
12 corruption, or any alleged coverup activities by Mr. Rao
13 with respect to those matters?
14 MR. SHANK: If you can answer the
15 question, Mr. Brown, without disclosing
16 communications you've had with Convergys
17 counsel, then you can answer; if not, then
18 please don't answer that question.
19 THE WITNESS: Can I confer with you
20 on this issue to --
21 MR. SHANK: Yeah.
22 THE WITNESS: -- clarify what's
23 considered privileged?
24 MR. LUCAS: Would you like to step
25 out, or you want me to step out? Whatever --

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1 MR. SHANK: We'll step out.
2 (OFF THE RECORD)
3 MR. SHANK: Can we have her -- either
4 have that read back or can you restate it?
5 MR. LUCAS: I'll try and restate it
6 BY MR. LUCAS:
7 Q Mr. Brown, is there any entries or
8 omission of entries, I guess, in Exhibit Number 7 which
9 Convergys believes are significant for purposes of
10 determining the cause or possible cause or causes of the
11 September 17th, 1999 production database corruption, or of
12 any alleged coverup type activities by Mr. Rao with
13 respect to those events?
14 MR. SHANK: Mr. Brown, as the
15 question's worded, you can tell Mr. Lucas your
16 beliefs, but you cannot tell Mr. Lucas, and
17 I'm instructing you not to tell him any
18 communications that you've had with Convergys
19 counsel as to what they've said to you or what
20 you've said to them.
21 So you can tell Mr. Lucas your
22 beliefs, but do not disclose any communications
23 you've had with Convergys counsel or Convergys
24 counsel has had with you. Do you understand
25 the instruction?

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1 THE WITNESS: Yes. This might take a
2 few minutes.
3 MR. LUCAS: That's all right. Let's
4 go off the record.
5 (OFF THE RECORD)
6 MR. SHANK: After conferring with the
7 witness again, I'm going to modify the
8 instruction a bit. Mr. Brown testified in his
9 previous deposition that the topic of this
10 particular exhibit was referenced either
11 directly or indirectly in his e-mail to Bill
12 Koopmans dated September 20th. I'm sorry,
13 September 21st.
14 He can answer the question to the
15 extent the question is directed at those
16 communications. Any other beliefs that Mr.
17 Brown may or may not have that are responsive
18 to the question that you've asked Kevin, would
19 implicate the attorney work product privilege
20 and also the attorney/client privilege. So I'm
21 not going to let him testify as to any other
22 beliefs that he has responsive to your
23 question, other than as they relate to his e-
24 mail and his communications with Mr. Hulin.
25 MR. LUCAS: Mr. Hulin or Mr. Koopmans

Page

1 or both?
2 MR. SHANK: Mr. Hul -- Well, Mr.
3 Hulin and Mr. Koopmans at the time -- around
4 the time of the outage.
5 MR. LUCAS: Okay. Well, I mean, I
6 don't think that's an appropriate objection,
7 but there's nothing I can do about that.
8 BY MR. LUCAS:
9 Q So, Mr. Brown, in light of your
10 understanding of what your counsel just stated, can you
11 answer my question?
12 A The only significant difference that I
13 know of between the two files, outside of instructions by
14 counsel, is the fact that Mr. Hulin had looked at the
15 history file at that time, did not find certain commands
16 that existed on September 17th; namely, the removal of
17 the alert log file. And, therefore, the presumption was
18 made that those commands were likely removed from the
19 file.
20 Q Okay. So there's nothing you could point
21 out to me in Exhibit 7, which would be a line item or a
22 command in response to my question?
23 MR. SHANK: There's nothing that's
24 non-privileged, Kevin.
25 MR. LUCAS: I'm not trying to -- I

16 (Pages 58 to 61)

DARIN BROWN

February 19, 2004

<p style="text-align: right;">Page 62</p> <p>1 mean, subject to the objection that's been made</p> <p>2 --</p> <p>3 THE WITNESS: Correct, there's</p> <p>4 nothing.</p> <p>5 BY MR. LUCAS:</p> <p>6 Q -- there's nothing you could point to, to</p> <p>7 indicate that because you're telling me what it is is an</p> <p>8 omission; is that correct?</p> <p>9 A As -- Correct.</p> <p>10 Q Now, you attended Mr. Rao's deposition</p> <p>11 yesterday; is that correct?</p> <p>12 A Yes, that's correct.</p> <p>13 Q And I'm not going to try to characterize</p> <p>14 his testimony We can get his transcript when the time</p> <p>15 comes But as a general matter, Mr. Rao was asked certain</p> <p>16 questions in your presence as to whether he could or would</p> <p>17 speculate or venture some thoughts on what might have been</p> <p>18 the cause of the production database corruption on</p> <p>19 September 17th, 1999. Do you recall that testimony,</p> <p>20 generally?</p> <p>21 A I do.</p> <p>22 Q Okay. And do you recall that Mr. Rao</p> <p>23 indicated a view that the import function that he</p> <p>24 testified to or import command that he testified to as</p> <p>25 having issued on September 17th, might have caused the</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. SHANK: Carve out -- I'm going to</p> <p>2 instruct the same wit -- the witness the same</p> <p>3 way I did before. If to answer Mr. Lucas'</p> <p>4 question you have to disclose privileged</p> <p>5 communications, don't answer the question. So</p> <p>6 I think Kevin will agree to carve out</p> <p>7 privileged communications from your question.</p> <p>8 Is that correct, Kevin?</p> <p>9 MR. LUCAS: I can't change the</p> <p>10 instruction. I'm not sure -- As a general</p> <p>11 matter, yes. But I don't know what constitutes</p> <p>12 those discussions here. But that's the</p> <p>13 instruction that's on the table. So follow</p> <p>14 your counsel's instruction and answer the</p> <p>15 question as best your able.</p> <p>16 THE WITNESS: I -- Then I can't</p> <p>17 answer the question.</p> <p>18 MR. LUCAS: In light of the</p> <p>19 instructions in the last five minutes, there's</p> <p>20 nothing else. I mean, I would have additional</p> <p>21 questions if the witness could provide other</p> <p>22 testimony, but for the instructions, he's not.</p> <p>23 So that'll be the end of my questioning of Mr.</p> <p>24 Brown. Thank you for your time.</p> <p>25 MR. SHANK: We'll reserve signature,</p>
<p style="text-align: right;">Page 63</p> <p>1 data -- database -- I'm sorry -- the production database</p> <p>2 corruption? Do you recall that testimony generally?</p> <p>3 A Yes.</p> <p>4 Q Had you considered, you personally, prior</p> <p>5 to September 21, 1999, the question or issue as to what</p> <p>6 effect, if any, the import command or function in question</p> <p>7 had or may have had on the production database corruption</p> <p>8 in question?</p> <p>9 A I don't believe I had.</p> <p>10 Q Had anyone within Convergys made such a</p> <p>11 consideration prior to September 21 of 1999?</p> <p>12 MR. SHANK: If you know, Mr. Brown.</p> <p>13 THE WITNESS: I don't recall anybody</p> <p>14 telling me that.</p> <p>15 BY MR. LUCAS:</p> <p>16 Q So you don't recall, for example, Mr.</p> <p>17 Koopmans or Mr. Hulin addressing that issue or having</p> <p>18 indicated that they considered such an issue back in</p> <p>19 September of 1999, correct?</p> <p>20 A I don't recall.</p> <p>21 Q Prior to yesterday, had you ever</p> <p>22 considered what effect or possible effect the import</p> <p>23 command or import function may have had in connection with</p> <p>24 the production database corruption of September 17th,</p> <p>25 1999?</p>	<p style="text-align: right;">Page 65</p> <p>1 for the record.</p> <p>2</p> <p>3 (WHEREUPON, THE DEPOSITION OF DARIN BROWN</p> <p>4 WAS CONCLUDED AT 1:37 P.M.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

17 (Pages 62 to 65)

CONVERGYS vs. IGATE CORPORATION, et al.
William P. Koopmans
February 12, 2004

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PAGE 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CONVERGYS INFORMATION :
MANAGEMENT GROUP, INC., :
AND CHUBB CUSTOM :
INSURANCE COMPANY, :
Plaintiffs :
-v- : Case No. CV-01-618
: (Judge Beckwith)
IGATE CORPORATION, et al., :
Defendants :
- 0 -

The deposition of WILLIAM P. KOOPMANS, taken before Melea E. Chaney, Court Reporter and Notary Public in and for the State of Ohio, at the law offices of Ulmer & Berne, 600 Vine Street, Suite 2800, Cincinnati, Ohio, on the 12th day of February, 2004, beginning at the hour of 9:23 a.m. and ending at the hour of 6:09 p.m. of the same date.

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CONVERGYS vs. IGATE CORPORATION, et al.

William P. Koopmans

February 12, 2004

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Q Did you take any steps or anyone else at your direction take steps to preserve anything else at that time, such as keystroke logs, alert logs, activities of the data recovery efforts, anything else at all having to do with activities that Mr. Rao had been engaged in prior to November 17th of 1999 or after September 17th.

MR. SHANK: Hang on a second. I just want to make it clear that there are other witnesses who are also going to testify on this topic as well. So I'm assuming that this question is being asked of Mr. Koopmans in his personal capacity and not in his corporate capacity.

MR. LUCAS: I'm asking in both capacities. If he's answering in one, only you can control that, not me.

MR. SHANK: Well, the point is, is there are other witnesses who can also testify to this issue as well.

MR. LUCAS: You've conveyed that on the record. So --

THE WITNESS: Up through the 20th we recovered or stored away things like the history file and we recovered the alert log.

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Following our analysis and conclusion, there were no additional steps to -- to retrieve or retain any additional electronic or computerized logs with respect to the outage.

The data recovery continued in -- in its entirety for three months and, as part of that process, we retained documents about the methods that we used to recover data. Most of those were published in the postmortem to Sprint so that in the event this ever occurred again, we had those documents.

BY MR. LUCAS:

Q Let me take those one at a time, if I can. The electronic documents which you called like the history file and the alert logs, did you or Convergys make any efforts to maintain and preserve the keystroke logs, for example, of all other production DBAs or development DBAs that were involved in the Sprint project?

A No.

Q With respect to --

MR. SHANK: Hang on. Hang on. There has been at least one of those documents produced recently in discovery. So I'm going to object to that question to the extent that

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it ignores the fact that there has been a history file produced recently in discovery by Convergys.

MR. LUCAS: All I can do is ask this witness. I mean, I haven't even seen these documents. They were delivered here. We'll take a look at them and then maybe you can identify them.

BY MR. LUCAS:

Q This witness -- at least no active steps were taken that you know of to preserve those type of documents, correct?

A Other than the documents that we preserved as part of the identifying of the root cause, that is correct.

Q So only those specific documents that you preserved in terms of a history file or portions of a history file relating to Ragesh Rao, correct?

A Correct.

Q Relating to a alert log for a certain time period, correct?

A Correct.

Q And no other history files of Mr. Rao for his prior work at Convergys, including the work he did in implementing the usage split in the Y2K, the UAT

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or the pre-production environments, correct?

A That is correct. Those history files are circular and recycle themselves.

Q When do they recycle?

A I think it's every 5000 lines. Darin would probably know more precisely. I believe that's correct.

Q Well, were any efforts made to go back and retain other history files of Mr. Rao or to see if they existed on any other tape or any other backup system?

A No.

Q And you did not make the determination of what was even going to be preserved, right; somebody else did?

MR. SHANK: Objection.

MR. LUCAS: I'll rephrase the question.

BY MR. LUCAS:

Q Did you gather Mr. Rao's history file?

A Did I personally? No.

Q Who did?

A Darin.

Q Did you do anything to gather, preserve alert logs for either the SSUP or SSP?

A Darin and I made sure the documents

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William P. Koopmans

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1 that were pertinent to our identification of root cause
2 were stored.

3 Q What was pertinent to your
4 identification, what you viewed as pertinent, correct?

5 A Correct.

6 Q So if other people thought other things
7 were pertinent and relevant, those were not preserved;
8 is that correct?

9 MR. SHANK: Objection to form.

10 THE WITNESS: I was not aware anybody
11 had any other opinion in terms of documents
12 that were pertinent.

13 BY MR. LUCAS:

14 Q Well, let me just see if I understand.
15 At the time, let's say the period between September
16 16th and September 23rd which is the latter part when
17 you would have completed your notes, did you have any
18 discussion with any of the defendants here, Mastech or
19 iGate, concerning these matters?

20 A In what time frame?

21 Q Between September the 17th and, say,
22 September the 23rd.

23 A I had many discussions with Ragesh.

24 Q Other than Mr. Rao, did you have any
25 discussions with anyone from Mastech or iGate?

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1 A I did not, to the best of my knowledge.

2 Q Did anyone from Convergys have any
3 discussions during that time period, for example, with
4 Mr. Rao's then employer?

5 MR. SHANK: Objection to foundation.

6 You can answer to the extent you know, Mr.
7 Koopmans.

8 THE WITNESS: I don't have any idea if

9 HR or legal --

10 BY MR. LUCAS:

11 Q Did Sprint instruct Convergys or you
12 what documents it wanted to see?

13 A Not that I recall.

14 Q In fact, the process worked just the
15 opposite, you gathered and Convergys gathered
16 information, you did your analysis and then you
17 presented your results or your conclusions to Sprint,
18 correct?

19 A Correct. The burden of proof is on us
20 to explain to them what happened with our system.

21 Q So what Sprint might have viewed as
22 relevant at the time was not something that was
23 inquired into by you or Convergys when you were
24 deciding what documents or electronic media to
25 preserve, correct?

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1 MR. SHANK: Objection to form and
2 foundation.

3 THE WITNESS: Historically if Sprint is
4 interested in something, they tell us.

5 BY MR. LUCAS:

6 Q But in this case Convergys didn't
7 confer with them to ask, correct?

8 MR. SHANK: Objection to foundation.

9 THE WITNESS: We had lots of dialogue
10 on this outage and what we were doing and --
11 and how we were doing it.

12 BY MR. LUCAS:

13 Q Mr. Koopmans, I just want to go to your
14 answer. You said you preserved everything that anyone
15 thought was relevant. And I just want to understand
16 that the only people who made the determination that
17 what was relevant was Convergys.

18 MR. SHANK: I think he's already
19 answered your question a couple times.

20 MR. LUCAS: Well, no, let him answer
21 the question.

22 BY MR. LUCAS:

23 Q Did Sprint ever have any discussion
24 with you during this time period as to what documents
25 should be preserved as relevant?

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1 A Did they specify anything they thought
2 was relevant? No.

3 Q And the same thing would be true with
4 respect to Sun Microsystems, correct?

5 A Correct.

6 Q And the same thing would be true with
7 respect to Oracle, correct?

8 A Darin could answer that. Oracle
9 frequently asks for specific database logs when we open
10 a TAR. So if we go back to the TAR history, they might
11 have asked for logs or documents to transmit to -- to
12 their site for analysis.

13 Q TAR is a technical assistance request
14 to Oracle?

15 A That is correct.

16 Q And you just don't know the answer to
17 that question?

18 A Correct. I presume the answer is stuff
19 was sent to Oracle.

20 Q Now, you indicated that efforts in the
21 recovery were summarized as part of your postmortem,
22 correct?

23 A Correct.

24 Q But the underlying documents that would
25 show what it is that Convergys actually did in its

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1 from, what you were dealing with back at the time?
 2 A I believe this is the one that was
 3 retained in the normal location for Ragesh. This is
 4 the one that would have been reviewed and is referenced
 5 in -- in some of the e-mails regarding the
 6 investigation. This would have been the one that
 7 Ragesh edited.

8 What we had done was in the middle of
 9 that event saved off a copy of his keystroke log and
 10 that is the one we had produced.

11 Q Let me ask you: At the time back in
 12 mid-September of 1999 did somebody at Convergys
 13 consciously and deliberately preserve in the files that
 14 record you have in your hand, that keystroke log you
 15 have in your hand?

16 A Consciously, no.

17 Q It was just there?

18 A Correct.

19 Q And then you're saying some subset of
 20 this was, what, printed up or --

21 A A copy of that history log as it -- as
 22 it existed somewhere in the middle of the day on 9/17
 23 was copied off.

24 Q And who did the copying off of that?

25 A Darin Brown.

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1 Q And what do you mean by copied off?

2 A He took a copy of the production
 3 keystroke log for Ragesh and copied it, made a
 4 duplicate into a secure directory.

5 Q And you're saying that that copy that
 6 Mr. Darin Brown did at the time is a subset or a
 7 portion of the document you have in your hand?

8 MR. SHANK: Object to form.

9 THE WITNESS: That -- that copy was a
 10 duplicate copy of the entire log as it existed
 11 at the point in time he made a copy. That file
 12 would continue to change as Ragesh did more
 13 activity. It's a 5000 line rolling log, so as
 14 he entered a new line, a line in the front was
 15 deleted. So that log changed up until his last
 16 activity on the system.

17 BY MR. LUCAS:

18 Q And so I take it then, and you correct
 19 me if I'm wrong, the document you have in your hand
 20 then is different or would be different than what Mr.
 21 Brown locked off on the 17th, depending upon whether or
 22 not Mr. Rao did additional keystroke entries after
 23 whatever time that was on the 17th; is that correct?

24 A Well, what we know is it's different in
 25 two ways. Additional activity as well as edited, the

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1 file was edited.

2 Q Now, are you saying that the document
 3 that contains the additional activity and the document
 4 that contains the editing or the document that exists
 5 after the editing as a result of the editing is the
 6 document you have in your hand?

7 A Let me restate. That this document
 8 would contain activity that he did after Darin copied
 9 off the production copy and it also includes the edits
 10 or changes that he made specifically to this history
 11 file.

12 Q Why don't we mark that then with an
 13 exhibit number. We'll mark it as Exhibit Number 7.
 14 Now, Mr. Koopmans, I just want to make sure I
 15 understand. When you were making your determinations
 16 and your investigation back in mid-September of 1999,
 17 did you have and were you referring to the version of
 18 the keystroke log that had been locked in by Mr. Darin
 19 Brown sometime on September the 17th or were you
 20 relying on and referring to what I'll call the updated
 21 keystroke log that now appears as Exhibit 7?

22 A We looked at both.

23 Q I'm going to put that aside. I can't
 24 imagine why in this litigation, why we're getting this
 25 now for the first time, so I'm going to put it aside

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1 and take a look at it. I've never seen this document
 2 before. Frankly, I haven't looked at it until it came
 3 within the past 24 hours.

4 MR. SHANK: Well, hang on. I do want
 5 to note for the record, Kevin, the relevant
 6 portions of his alert log history have been
 7 produced in discovery. You're suggesting --

8 MR. LUCAS: We're not talking about any
 9 alert log, are we?

10 THE WITNESS: History log.

11 MR. LUCAS: This is a keystroke log.

12 MR. SHANK: I misspoke. The relevant
 13 portions of his keystroke history have been
 14 produced in discovery that do reveal what he
 15 did. So your implication that this document
 16 wasn't produced -- the documents essential to
 17 your defense of the case were not produced is
 18 not correct.

19 MR. LUCAS: Well, let me ask the
 20 witness.

21 BY MR. LUCAS:

22 Q After the locked-in version, the
 23 version that was locked in on 9/17, is that what was
 24 produced in this case, excerpts from the locked-in
 25 version?

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1 A Both excerpts and the document in its
 2 entirety, yes.
 3 Q The locked-in version in its entirety
 4 and excerpts from it?
 5 A Correct.
 6 Q But this, what I'm going to call -- I
 7 mean, I don't know what to call it -- the updated
 8 keystroke log was not produced?
 9 A I don't believe the entire log was
 10 produced. I'm not sure if excerpts from it were
 11 produced or not.
 12 Q Okay. In the entries that appear after
 13 the locked-in time on 9/17, so the new entries that
 14 would appear that would not have appeared in the
 15 version that was produced in discovery, do they reflect
 16 -- I don't have your exact language, that's what I was
 17 looking for -- do they reflect what you indicated were
 18 keystrokes reflecting editing of this log?
 19 MR. SHANK: Do the documents that were
 20 produced reflect that?
 21 MR. LUCAS: No. I'm trying to use what
 22 you guys are giving me to work with, which is
 23 pretty hard.
 24 BY MR. LUCAS:
 25 Q The portion that's in Exhibit 7 --

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1 removed those entries from his history file.
 2 Q Now, let me see if I understand. What
 3 we're calling the keystroke log or the history log that
 4 we're looking at like Exhibit Number 7 --
 5 A Mm-hmm.
 6 Q -- and then the locked-down version
 7 we're talking about, these are keystrokes that take
 8 place at the operating system level, correct?
 9 A That is correct.
 10 Q These do not reflect what, if anything,
 11 took place within various Oracle utilities, correct?
 12 A That is correct.
 13 Q And that's, in fact, in the normal
 14 course that you don't -- when you go into an Oracle
 15 utility, in the normal course that would not show up on
 16 an operating system log, correct?
 17 A That is correct.
 18 Q Now, to make a change in the operating
 19 system keystroke log you would have to enter keystrokes
 20 that would appear, would they not, in the operating
 21 system keystroke history log itself?
 22 A If they were done on the system, yes.
 23 If the editing were done on the Solaris host.
 24 Q I'm sorry. Say that again.
 25 A If the editing were done on the Solaris

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1 A Yes.
 2 Q -- that was not in the locked-in
 3 version, so it's --
 4 A Right.
 5 Q -- got to be something near the back,
 6 right?
 7 A Right.
 8 Q The way you described this 5000 line --
 9 A Correct.
 10 Q -- rolling system. Does the editing
 11 that you're talking about, what you view as being
 12 editing, does that appear in the portion of Exhibit 7
 13 after the locked-in version or does it appear in the
 14 portion of Exhibit 7 that was in the locked-in version?
 15 MR. SHANK: Objection. Form and
 16 foundation.
 17 THE WITNESS: Editing of the alert log
 18 does appear. What is likely and presumably
 19 editing of the alert log does appear in the
 20 locked-down version but not in the final
 21 version.
 22 BY MR. LUCAS:
 23 Q And what is your understanding of why
 24 it does not appear in the final version?
 25 A It -- it is my strong belief that he

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1 host, that would be correct.
 2 Q Are there any keystrokes on Exhibit 7
 3 that show editing to the operating system Rao keystroke
 4 history log?
 5 MR. SHANK: Objection to foundation.
 6 Again, I don't think this is the witness to ask
 7 that question to.
 8 THE WITNESS: I was going to say, you
 9 need to ask Darin that question.
 10 BY MR. LUCAS:
 11 Q Well, are you aware of any entries on
 12 Exhibit Number 7 that reflect that Mr. Rao made some
 13 sort of editing of the keystrokes that appear, the
 14 operating system keystrokes that appear in the history
 15 log?
 16 MR. SHANK: Same objection, Kevin. I'm
 17 not even sure this witness has reviewed Exhibit
 18 7.
 19 MR. LUCAS: Well, I think we're going
 20 to find that this witness decided to terminate
 21 Mr. Rao's employment and make a series of
 22 allegations about it and so I would hope he had
 23 some reason for making his decisions.
 24 MR. SHANK: Well, let me say, I don't
 25 think he's reviewed Exhibit 7 recently.

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William P. Koopmans

February 17, 2004

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SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

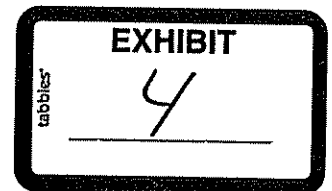
CONVERGYS INFORMATION :
MANAGEMENT GROUP, INC., :
AND CHUBB CUSTOM :
INSURANCE COMPANY, :
Plaintiffs :
-v- : Case No. CV-01-618
: (Judge Beckwith)
IGATE CORPORATION, et al., :
Defendants :

- 0 -

The deposition of WILLIAM P. KOOPMANS,
continued in progress, taken before Melea E. Chaney,
Court Reporter and Notary Public in and for the State
of Ohio, at the law offices of Ulmer & Berne, 600 Vine
Street, Suite 2800, Cincinnati, Ohio, on the 17th day
of February, 2004, beginning at the hour of 9:23 a.m.,
adjourning at 10:57 a.m., resuming at 3:49 p.m. and
ending at the hour of 6:09 p.m. of the same date.

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1 with Mr. Rao on Monday the 20th?

2 A I got together with Neil and Ravi and
3 kind of walked through what Ragesh had told me and it
4 raised more questions again. I'm not as technical as
5 the rest of these guys, so they had a bunch of
6 questions, so the three of us went back and sat down
7 with Ragesh.

8 Q And what time of day was that?

9 A As I recall, that was late afternoon.

10 Q And how long did that meeting last?

11 A Again, I can't remember for sure, but I
12 would guess probably on the order of 45 minutes or --
13 or so.

14 Q Do you recall anything that was stated
15 or anything that was done at that meeting other than or
16 in addition to what's set forth on paragraphs, what,
17 two and three of your Exhibit 18?

18 A This is pretty cursory. We went
19 through what we deemed were probably five or six logs
20 or locations where we believed there would be evidence
21 of the activity to create the tablespaces or the
22 corruption, where that would be. And we went and
23 looked at every one of those and every one was clean,
24 had no evidence of -- did not provide that fingerprint
25 or evidence of the corruption or activity.

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1 Q Do you recall any particular question
2 that you, Ravi or Neil asked Mr. Rao during this
3 meeting or any particular information or response that
4 Mr. Rao provided to you?

5 A No. We were directing him to go look
6 in different places and -- and he was, as I recall,
7 doing the keyboard work to -- to take us to those
8 places.

9 Q So you would tell him where you wanted
10 to look, he would then punch it up on his terminal, you
11 would all look at it together?

12 A That is correct.

13 Q And then it appears, however, from your
14 Exhibit 18 that you also met with Ravi and Neil alone
15 at one point and then just met with Neil alone. Is
16 that, in fact, what happened?

17 A That is correct.

18 Q When you, Ravi and Neil were together,
19 the three of you, what did you do and what did the
20 three of you look at?

21 A Well, we were mainly going over what we
22 had just -- when the three of us met, what we had just
23 gone through with Ragesh. We had had, you know,
24 evidence and what we felt were pretty good leads on
25 Friday that Ragesh was behind the corruption, but in

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1 trying to find substantive proof on Monday of what he
2 had done, we could not find it.

3 Q And after the three of you met, did you
4 then have a private meeting without Ravi and just with
5 Neil?

6 A Yes. As I recall, Ravi went home.
7 Neil and I continued to work on trying to understand or
8 come up with proof of what had happened.

9 Q And how long did you meet with Ravi and
10 Neil and you, the three of you together?

11 A Again, I don't recall precisely, but I
12 would guess on the order of 30 minutes.

13 Q And then you and Neil met after it was
14 all over. For how long did the two of you meet?

15 A Again, I can't remember precisely, but,
16 as I recall, it was on the order of an hour to two
17 hours we spent.

18 Q Your Exhibit 18 was actually sent at
19 10:45 or 10:44 p.m., so late in the evening of Monday
20 the 20th. Were you meeting with Neil right up to the
21 time you did this e-mail?

22 A I don't know if it was right up to that
23 time, but it was well into the evening.

24 Q Would you look at Exhibit 14? Keep
25 that document in front of you, Exhibit 18. You may

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1 want to look at it.

2 But if you look at Exhibit 14 -- and
3 you've already been through this in terms of the
4 documents -- I just want you to talk right now at least
5 or direct your attention to the first two pages of
6 Exhibit 14 --

7 A Mm-hmm.

8 Q -- where it says procedure followed to
9 create the usage instance.

10 A Right.

11 Q CVG 283 and 284. You had received
12 these two pages early in the day from Mr. Rao, correct?

13 A That is correct.

14 Q What did you do with this two-page
15 document?

16 A As I recall, we walked through this at
17 some level, but we really focused on the scripts and
18 the logs, the one.SQL, two.SQL, three.SQL.

19 Q When you say we walked through it, are
20 you talking about with Mr. Rao or are you talking about
21 in your separate meetings with Ravi and Neil together
22 or with Neil alone?

23 A I know Ragesh and I walked through this
24 in the first meeting I had with him. I can't recall
25 whether we went through this again with Ravi, Neil,

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Q But do you recall at all looking into this paragraph at all further at the time?

A Again, as I just said, when you read this, there's nothing damning in -- in this that says Ragesh did something. It's only by inference, if you really read it and think about it, that his implication here is something different was done in production than we did in the test environment and that was the fatal mistake or change in process.

Q But were you just looking for damning evidence against Mr. Rao --

MR. SHANK: Objection.

MR. LUCAS: -- or were you looking to find out what happened?

MR. SHANK: Objection to form.

THE WITNESS: Clearly we were looking to find out what happened.

BY MR. LUCAS:

Q Now, I take it you've told me everything that you recall concerning your discussions with Mr. Rao, Mr. Kura or Mr. Hulin on the 20th, on Monday the 20th, concerning Mr. Rao's activities; is that correct?

A Other than, and it's implied here, we haven't talked about what Neil and I did in the evening

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of the 20th.

Q Okay. Well, I haven't mentioned Mr. Brown yet. But at least with respect to Mr. Rao, Mr. Hulin and Mr. Kura, have you told me everything, your dealings with those three gentlemen, either alone, together or together with some of them, that took place on the 20th concerning Mr. Rao or the data corruption or Mr. Rao's alleged cover-up activities?

MR. SHANK: I think he was trying to tell you something additional that he and Neil Hulin did on the 20th, the night of the 20th. Was that not what you were saying?

THE WITNESS: That -- that is correct. There is more that I haven't -- we haven't talked about that Neil and I went through.

But what you're asking, was there other stuff in the meeting with Rao Ragesh -- or Ragesh, Neil and Ravi and myself that I haven't talked about, the only thing I can recall in addition is we did talk through the process we had expected to follow, the schedule, that data files weren't going to be created until after SRDF and hot backup testing. SRDF testing was to occur in the morning, hot backup testing in the afternoon. And the -- the execution -- or

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the creation of the data files would have been Friday night or Saturday morning.

We also went -- reiterated that Ravi was the backup and that he was to have reviewed -- I mean, we just confirmed the process we've talked about before that Ravi was to have reviewed the scripts.

BY MR. LUCAS:

Q Okay. Now, did you review that Mr. Rao?

A Yes.

Q Do you recall anything in particular in terms of anything that you said or he said either of the other parties disagreed with?

A As I --

MR. SHANK: Objection to form.

THE WITNESS: As I recall, I went through what I just described as, this was our plan of record, correct, and Ragesh answered yes or affirmed all of those points.

MR. LUCAS: Okay. I didn't want to cut off your testimony.

BY MR. LUCAS:

Q You indicated that there was something else, I believe, that you did on the 20th, on Monday

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the 20th, related to these matters with Mr. Hulin?

A Yes.

Q Can you tell me what that additional activity was and when it took place?

A Neil and I just spent another hour or two. We talked about the time he and I spent, but what we did in that time is described in the third paragraph where we went almost line by line through Ragesh's history file. We went through Eric's history file. We went through and did some scans on -- well, also Ravi and Rick Litton, but then we went also through and -- and did a grep for specific commands on all history files.

Q Let me ask you: When you went through Ravi's history file, what were you and Neil looking specifically for?

A Just any evidence if Ravi might have been in -- you know, if he had run commands that would have implied that he played some role.

Q And what were you looking for or why were you looking at Rick Litton's keystroke logs?

A Rick was involved in -- in the -- in this project. He was not really involved in the production activity, but Rick was responsible for maintaining our scripts to do the SRDF replication to

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CONVERGYS INFORMATION :
MANAGEMENT GROUP, INC., :
and CHUBB CUSTOM INSURANCE :
COMPANY, :

Plaintiffs,

-v-

CASE NO.: CV-01-618

:(Judge Beckwith)

IGATE CORPORATION, et al.,

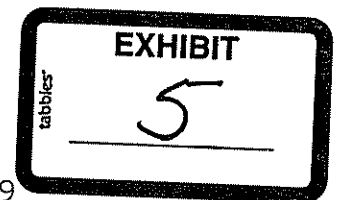
Defendants.

* * * * *

The deposition of ERIC JAY WALTERS, taken before Debra A. Sprague, Certified Court Reporter and Notary Public in and for the State of Ohio, at the offices of Ulmer and Berne, LLP, 600 Vine Street, Suite 2800, Cincinnati, Ohio, on the 19th day of February, 2004, beginning at the hour of 9:46 a.m., and ending at the hour of 12:26 p.m.

* * * * *
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ERIC JAY WALTERS

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1 A I gave him a specific time frame.
 2 Q Let me ask you -- I'm going to show you a
 3 document that's been produced by Convergys, and we'll mark
 4 it as Exhibit Number 49.
 5 A Ye gad
 6 Q Do you recognize this document? Well, let
 7 me just first, for the record, this is a document that's
 8 been produced by Convergys in discovery. It has no -- I
 9 don't think it was ever marked with Convergys litigation
 10 stamp numbers, but it was produced last week and it's
 11 numbered at the bottom page one through one seventy-seven.
 12 And for identification purposes, the heading or whatever
 13 it is you want to call it at the top of the page is
 14 ewalters_hist_bak.txt.
 15 A Um-hmm.
 16 Q Can you tell me what this document is, Mr
 17 Walters?
 18 A This is a history file of your Unix
 19 commands.
 20 Q How did you know that this was available
 21 to you?
 22 A It's part of the configuration of the
 23 environment to set up individual history files when you
 24 log in. You have to opt in to Oracle and then it
 25 automatically grabs your ID that you're opting into, to

1 after midnight, on the morning of Tuesday, September 21,
 2 that relates to these matters
 3 A Um-hmm.
 4 Q And in this, you had referred to yourself
 5 before I think as the guilty party. You said, now, what I
 6 wanted to see, but here's -- Not what I wanted to see, but
 7 here's your proof, I am the guilty party. And then you
 8 have a number of entries
 9 A Um-hmm
 10 Q Unix commands or other entries that appear
 11 below. Can you just generally tell me, are those entries
 12 that appear below, are those entries that appeared on your
 13 keystroke log or shell history that relates to the
 14 activities that you took in the early morning hours when
 15 you were paged of September 17th, that resulted in the
 16 archive log corruption which you've already testified to?
 17 A Yes.
 18 Q Okay. These particular entries, do they
 19 appear somewhere in Exhibit 49?
 20 A I would hope
 21 Q But you don't -- You haven't been back
 22 through to --
 23 A I would have -- Yeah, I -- you would --
 24 I'm sure they're in here somewhere, I would guess.
 25 Q Let me ask you this. Who can access your

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1 create your personal history file. So your keystrokes are
 2 then available to you as you're running to kinda go back
 3 up and reimplement keystrokes that you've done before.
 4 Q Is that something you knew based upon your
 5 prior Unix administrator background?
 6 A Part of my Unix experience, yes. Whether
 7 it was because of my system administration, I don't --
 8 maybe, yeah. I mean, yeah.
 9 Q But part of your Unix background, you were
 10 aware of that; is that correct?
 11 A Yes.
 12 Q Now, then I take it you called it up at
 13 your terminal. You said it was, I think the term you used
 14 that Mr. Williams would have made it available, recovered
 15 it as a file on the Unix box, I think is what you said.
 16 A Um-hmm.
 17 Q And then what? Then you reviewed it --
 18 A I just searched for the archive log that
 19 was in question. I would not sit there and try and read
 20 all this.
 21 Q Okay. And then let me show you a document
 22 or ask Mr. Shank to show you a document -- Maybe this'll
 23 be quicker. -- that's been marked as Exhibit Number 24.
 24 Do you recognize Exhibit Number 24 as being an e-mail you
 25 sent to Mr. Koopmans in the very early morning hours, 20

1 shell history?
 2 A Anybody that has -- is logged into Oracle
 3 Q So Mr. Walters, for example, at any point
 4 in time -- Not Mr. Walters. Let's change it. Someone
 5 over in the operating systems group, if they wanted to at
 6 any point in time, could review your shell history; is
 7 that correct?
 8 A Yes, if they access to Oracle account.
 9 yes, they have read permissions to this file.
 10 MR SHANK: And when you say access,
 11 Kevin, are you talking about just reading the
 12 shell history?
 13 BY MR. LUCAS:
 14 Q Well, let's just take them one at a time
 15 If you wanted to read it -- If someone wanted just to look
 16 at your keystroke history --
 17 A Um-hmm.
 18 Q -- anybody with Oracle -- within Convergys
 19 at Oracle could do that; is that correct?
 20 A No, see, when you're on the Unix box, you
 21 have a specific account, okay. So I log in as ewalters
 22 Then I what they call opt over and become the user Oracle
 23 Once I opt over, only certain people have that privilege,
 24 and those would be the DBAs. Once they opt into Oracle,
 25 then they have access to read/write to this file

20 (Pages 74 to 77)

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1 Q Let me just go through --
 2 A Now, it would be specific to, and I don't
 3 have here what the permissions are granted on that file
 4 But typically -- Well, obviously, the Oracle user would
 5 have read/write access I don't know who all would have
 6 read access. And then if you have root, you have access
 7 to do read/write to any file So the OSG group or the
 8 Unix administrators would have full access to become any
 9 user and -- and read/write to any file.
 10 Q And who did you say that was? That was
 11 the USG group you said would have that?
 12 A OSG.
 13 Q OSG, I'm sorry. Okay. Let me see if I
 14 understand this generally. That you would log on in your
 15 name.
 16 A Um-hmm.
 17 Q How did you do that? Is there some sort
 18 of a password that you do?
 19 A Yeah, we'd have individual passwords.
 20 Q And you can do that from any terminal?
 21 A Yeah.
 22 Q You wouldn't have to be sitting at your
 23 terminal? You could walk over to the next desk and log in
 24 as ewalters with your password; is that correct?
 25 A Yes.

1 Q You don't -- Do you know who the system
 2 administrators were that had root access over in the OSG
 3 group at the time?
 4 A I don't know the complete list.
 5 Q Mr. Williams, I take it, would have been
 6 at least one of them?
 7 A Yes.
 8 Q Okay. And I take it there would have been
 9 a number of others?
 10 A Yes, a couple others, at least.
 11 Q And then at the time in September of 1999,
 12 if Mr. Koopmans or Mr. Darin Brown or Mr. Neil Hulin as
 13 examples, wanted to, they could access your shell history,
 14 they could read it, and they could write to or edit it,
 15 correct?
 16 A They could.
 17 Q And they could do the same at the time
 18 with respect to Mr. Rao's shell history, correct?
 19 A Yes.
 20 Q And so if you wanted to, you could see Mr.
 21 Hulin's shell history, he could see yours, you could see
 22 Rao's, if you wanted to, and you knew how to do this; is
 23 that the basic situation?
 24 A Yeah. I mean, it -- the history file was
 25 set up this way specifically for convenience for the

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1 Q And then you opt and then you become the
 2 user. And as I think, at least I heard you, any of the
 3 DBAs, the Convergys DBAs then could have become the user
 4 for these purposes; is that correct?
 5 A Yes.
 6 Q And at a minimum, any of the Convergys
 7 DBAs could then have read your shell history, correct?
 8 A Yes.
 9 Q Any of the Convergys DBAs, could they have
 10 written to or edited your shell history?
 11 A Yes.
 12 Q Okay. And then at least everybody or at
 13 least the various people in the OSG group, as well, could
 14 have read and/or written to or edited your shell history?
 15 A Anybody with root access on that box.
 16 Q Okay. Now, what does that mean, root
 17 access on that box?
 18 A System administrator. Root access is the
 19 base account of any Unix box.
 20 Q So let me just --
 21 A And --
 22 Q -- ask you -- I'm sorry.
 23 A And from that you can do pretty much
 24 anything. You can bring down the box. You can do -- It's
 25 --

1 individual user.
 2 Q So the mere -- Do I correctly understand,
 3 however, that the mere fact that something appears on your
 4 shell history doesn't mean that you entered it; somebody
 5 else with access to your shell history could not only
 6 read, but write to it and edit it, if they wanted to?
 7 MR. SHANK: Object to foundation;
 8 calls for speculation.
 9 THE WITNESS: Could they? In
 10 conspiracy sense, yes.
 11 BY MR. LUCAS:
 12 Q Well, no, I don't mean in a conspiracy
 13 sense. I mean in an actuality sense it is -- it was
 14 possible at the time within Convergys for that to happen;
 15 is that correct?
 16 MR. SHANK: Objection.
 17 THE WITNESS: Yes.
 18 MR. SHANK: Foundation; calls for
 19 speculation.
 20 BY MR. LUCAS:
 21 Q Well, do you know at the time or are you
 22 unaware that people within Convergys' department were, in
 23 fact, accessing history files of various production DBAs?
 24 MR. SHANK: Object to form.
 25 THE WITNESS: No, I did not.

21 (Pages 78 to 81)

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1 BY MR. LUCAS:

2 Q I mean, I just -- I mean, I don't want you
3 to think I'm trying to get you in a conspiracy mode. Do
4 you know, for example, that Mr. Brown, in fact, Darin
5 Brown, in fact, was accessing history files of other
6 production DBAs at the time?

7 MR. SHANK: Objection to form.

8 THE WITNESS: No, I did not.

9 BY MR. LUCAS:

10 Q Okay. Did you know that Mr. Hulin, in
11 fact, during this time period, was actually accessing
12 history files, shell history files of other DBAs?

13 MR. SHANK: Objection to form.

14 THE WITNESS: No.

15 BY MR. LUCAS:

16 Q Do you know that the shell histories of
17 production DBAs that were being accessed by these
18 individuals included Mr. Rao, Mr. Rick Litten, Mr. Ravi
19 Kura and perhaps others?

20 MR. SHANK: Objection to form.

21 THE WITNESS: I don't know what their

22 -- Could they?

23 BY MR. LUCAS:

24 Q No, that they were. Do you know that they
25 were?

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1 CVG2657. It's a memoran -- It's an e-mail -- I'm sorry.

2 -- from you, dated September the 9th, 1999. And that has
3 notations on here that are mine. You can just ignore the
4 highlighting

5 But there's a sentence that says, Since
6 the SSUP instance will be located on unit 68, we'll need
7 an archive file system for it also. That's the sentence I
8 want to ask you about. Just take a look at the memorandum
9 to yourself.

10 A Okay.

11 Q Can you tell me what that -- Is that part
12 of the usage split project that you're referring to?

13 A Yes.

14 Q And can you just explain to me what that
15 means?

16 A Unit 68 would be an EMC frame. That point
17 would be -- And an EMC frame is just a disc drive

18 Q What does that mean? Does this mean
19 another archive log system was being set up for the usage
20 instance as part of the usage split?

21 A Right, you wouldn't -- you wouldn't mix
22 the two archive log destinations.

23 Q Can you turn back to Exhibit 49, which is
24 the document which is the shell history relating to you
25 that's been produced by Convergys in this case. Would you

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1 A I have -- no.

2 Q Does that surprise you?

3 MR. SHANK: Objection to form;
4 objection to foundation; calls for speculation.

5 THE WITNESS: I mean for what
6 purpose, I don't know. I mean, could it, yeah,
7 it could.

8 BY MR. LUCAS:

9 Q And all I'm asking, if it in fact
10 happened, which I'm representing to you it did, but --

11 A Okay.

12 Q -- if you don't believe -- you don't have
13 to believe me --

14 A Right.

15 Q But if it in fact happened, that would
16 surprise you, would it not?

17 MR. SHANK: Objection to form

18 THE WITNESS: Not if they were trying
19 to determine something.

20 BY MR. LUCAS:

21 Q I want to change the focus just a minute
22 because I neglected to ask you a document, and I want to
23 continue on and I'm afraid that I'll just forget. We
24 don't even have to mark it as an exhibit. I'm going to
25 show you a document that's been marked as Convergys'

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1 look first at the top, ewalters_hist_bak.txt.

2 A Um-hmm.

3 Q What does that mean?

4 A Eric Walters history backup dot text.

5 Q What is the BAK?

6 A Back up, that would be my guess

7 Q Well, let me ask you. Do you know what
8 the format or system is for identifying by Convergys in
9 September of 1999, for identifying a file of this sort?

10 A I don't -- I don't remember offhand how
11 they -- cause they can identify it within the profile; I
12 don't know.

13 Q Okay. Well, for example, this doesn't
14 have any numbers in it, any, you know, things that would
15 correspond to a date or something like that.

16 A Um-hmm.

17 Q Was it typical for Convergys at the time
18 back in 1999, if you know, to have some sort of
19 identification in shell histories that had numbers or
20 dates?

21 A No.

22 MR. SHANK: Objection to form.

23 BY MR. LUCAS:

24 Q It was not?

25 A No.

22 (Pages 82 to 85)